

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 03-0272P**  
**SalesTax**  
**For the Years 2000-2001**

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**ISSUE**

**I. Tax Administration- Ten Per Cent (10%) Negligence Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2 (b).

The taxpayer protests the imposition of the ten percent (10%) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer is a Sub-Chapter S corporation that operates a guest ranch and leases grazing rights and cattle. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use tax, interest, and penalty. The taxpayer paid a portion of the assessment and protested the imposition of the ten percent (10%) negligence penalty. Although given ample opportunity to do so, the taxpayer did not request a hearing or submit additional documentation. Therefore, this Letter of Findings is based on the contents of the file.

**I. Tax Administration- Ten Percent (10%) Negligence Penalty**

**DISCUSSION**

The taxpayer protests the imposition of the ten percent (10%) negligence penalty pursuant to IC 6-8.1-10-2.1. The taxpayer contends that the negligence penalty is inappropriate in this situation because the taxpayer did not intentionally fail to pay the proper amount of tax.

Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws,

rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The department's standard for the negligence penalty, as stated in the regulation, is significantly lower than intentional nonpayment of tax as argued by the taxpayer. Rather, the penalty can be properly imposed when the taxpayer is inattentive to its duties or disregards department's instructions. In this case, the taxpayer repeatedly failed to pay tax on a clearly taxable tractor and feed and salt blocks for the animals not used for an agricultural purpose. This failure to follow departmental instructions constitutes negligence.

### **FINDING**

The taxpayer's protest is denied.

KMA/JMM/JMS--031408